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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.		
10/798,505	03/11/2004	Keisuke Aoyama	013645.00005	6391		
33649	7590	11/17/2009	EXAMINER			
Mr. Christopher John Rourk Jackson Walker LLP 901 Main Street, Suite 6000 DALLAS, TX 75202				MEINECKE DIAZ, SUSANNA M		
ART UNIT		PAPER NUMBER				
3684						
MAIL DATE		DELIVERY MODE				
11/17/2009		PAPER				

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1 UNITED STATES PATENT AND TRADEMARK OFFICE

2

3 BEFORE THE BOARD OF PATENT APPEALS
4 AND INTERFERENCES
5

6

7 Ex parte KEISUKE AOYAMA, KOJIRO TOYOSHIMA, and
8 YOSHITAKA EZAKI
9

10

11 Appeal 2009-006755
12 Application 10/798,505
13 Technology Center 3600
14

15

16 Decided: November 17, 2009
17

18

19 Before MURRIEL E. CRAWFORD, HUBERT C. LORIN, and ANTON W.
20

21 FETTING, *Administrative Patent Judges*.

22 FETTING, *Administrative Patent Judge*.

23 DECISION ON APPEAL

1 STATEMENT OF THE CASE

2 Keisuke Aoyama, Kojiro Toyoshima, and Yoshitaka Ezaki (Appellants)
3 seek review under 35 U.S.C. § 134 (2002) of a final rejection of claims 11-
4 14, 21-36, and 38, the only claims pending in the application on appeal.

5 We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b)
6 (2002).

7 SUMMARY OF DECISION¹

8 We AFFIRM-IN-PART.

9 THE INVENTION

10 The Appellants invented a way of distribution change management that
11 allows a single entity to control distribution through warehouses controlled
12 by multiple entities. (Specification 1:¶ 001).

13 An understanding of the invention can be derived from a reading of
14 exemplary claims 11 and 26, which are reproduced below [bracketed matter
15 and some paragraphing added].

16 11. A system for supply chain management comprising:

¹ Our decision will make reference to the Appellants' Appeal Brief ("App. Br.," filed February 23, 2007) and Reply Brief ("Reply Br.," filed February 3, 2009), and the Examiner's Answer ("Answer," mailed December 24, 2008).

1 [1] an order controller system
2 including reverse logistics means for generating transfer
3 data; and
4 [2] a warehouse system
5 receiving the transfer data and generating shipping data.

6 26. A method for supply chain management comprising:
7 [1] receiving
8 warehouse inventory data and
9 distribution center inventory data and
10 generating reverse logistics data
11 to modify a distribution of inventory at a first warehouse
12 and a second warehouse;
13 [2] receiving the reverse logistics data
14 at a first warehouse system and
15 generating shipping data; and
16 [3] receiving the reverse logistics data
17 at a second warehouse system and
18 generating shipping data.

19 THE REJECTIONS

20 The Examiner relies upon the following prior art:

Yang	US 2001/0034673 A1	Oct. 25, 2001
Singh	US 2002/0169657 A1	Nov. 14, 2002

21 Claims 26-36 and 38 stand rejected under 35 U.S.C. § 101 as directed to
22 non-statutory subject matter.

1 Claims 11-14, 21-24, 26, and 31 stand rejected under 35 U.S.C. § 102(a)
2 as anticipated by Yang.

3 Claims 25, 27-30, and 32-36 stand rejected under 35 U.S.C. § 103(a) as
4 unpatentable over Yang and Singh.

5 Claim 38 stands rejected under 35 U.S.C. § 103(a) as unpatentable over
6 Yang.

ARGUMENTS

10 The Examiner raised this rejection for the first time in the Answer at 3-5,
11 finding that these claims failed the *Bilski* machine or transformation test.
12 The Appellants argue that the claims require the use of data processing
13 equipment and transform the location of inventory. Reply Br. 9-13.

16 The Appellants argue several limitations as missing from Yang in claims
17 11-13, 21-24, 26, and 31. The principal argument regarding independent
18 claims 11 and 26 is with regard to the reverse logistics means and data.
19 App. Br. 11-18.

22 *Claim 38 rejected under 35 U.S.C. § 103(a) as unpatentable over Yang.*

1 The Appellants argue the Examiner failed to present a *prima facie* basis
2 for these rejections. App. Br. 18-22).

3

ISSUES

5 The issue of whether the Appellants have sustained their burden of
6 showing that the Examiner erred in rejecting claims 26-36 and 38 under 35
7 U.S.C. § 101 as directed to non-statutory subject matter turns on whether the
8 claims transform something or are tied to a particular machine or apparatus.

9 The issue of whether the Appellants have sustained their burden of
10 showing that the Examiner erred in rejecting claims 11-14, 21-24, 26, and 31
11 under 35 U.S.C. § 102(a) as anticipated by Yang turns on the construction of
12 reverse logistics means and whether Yang describes the argued limitations.

13 The issues of whether the Appellants have sustained their burden of
14 showing that the Examiner erred in rejecting claims 25, 27-30, and 32-36
15 under 35 U.S.C. § 103(a) as unpatentable over Yang and Singh and in
16 rejecting claim 38 under 35 U.S.C. § 103(a) as unpatentable over Yang turn
17 on the construction of reverse logistics means and whether the claims were
18 predictable to one of ordinary skill in view of the art.

19 FACTS PERTINENT TO THE ISSUES

20 The following enumerated Findings of Fact (FF) are believed to be
21 supported by a preponderance of the evidence.

22 *Facts Related to Claim Construction*

1 01. The disclosure contains no lexicographic definition of “reverse
2 logistics.”

3 *Facts Related to Appellants’ Disclosure*

4 02. Figure 8 is a flowchart of a method 800 for reverse logistics in
5 accordance with an exemplary embodiment. Specification ¶ 0088.
6 Figure 8 contains a series of decision boxes each containing a
7 decision of whether to transfer product and if so, transferring
8 control to a box to generate shipping data.

9 03. There is no structure or algorithm for generating transfer data
10 disclosed in the discussion of Figure 8 at Specification
11 paragraphs’ 0088-93. These paragraphs do discuss generating
12 shipping data, but again without disclosing any structure or
13 algorithm for doing so.

14 04. The only disclosed apparatus for generating shipment data or
15 for receiving inventory data is a system for supply chain
16 management. Specification ¶ 0006. This shipping data can be
17 generated by order controller systems, warehouse systems and
18 distribution systems. Specification ¶ 0027.

19 05. The shipping data can be generated based upon order data,
20 order allocation data to warehouses, inventory data, and other
21 suitable data. Specification ¶ 0069. Thus, the basis for generating
22 shipping data is open ended.

23 *Facts Related to the Prior Art*

24 *Yang*

06. Yang is directed to electronic commercial transactions and in particular to an electronic marketplace providing service parts inventory planning and management. Yang ¶ 0002.

07. Yang specifically describes reverse logistics. Yang describes a growing requirement for many enterprises as the ability to better manage the "reverse logistics" flow of service parts that are defective or are otherwise returned for replacement or repair. The flow of such aftermarket service parts may often provide a valuable source of re-salable service parts, potentially reducing the need to purchase or manufacture new service parts. Enterprises which effectively manage reverse logistics flows can reduce their costs significantly. Yang ¶ 0004.

08. Yang uses a parts inventory management system to control parts inventory at many locations. Parts are transferred among stocking locations to meet planned inventory needs. Yang's system receives inventory level data at one or more stocking locations in a supply chain. Yang ¶ 0007.

09. Yang's supply chain includes those that use, manufacture, distribute or sell parts. Yang ¶ 0008.

10. Yang describes a "reverse logistics" or other returns supply chain as used for eventual insertion of parts back into a supply chain. Yang ¶ 0021.

11. Yang describes how excess inventory and inventory needed to meet plans can be transferred among inventory stocking locations. Yang ¶ 0037.

- 1 12. Where traceability is important, traceability documents are
- 2 provided for parts transfers. Yang ¶ 0043.
- 3 13. Yang describes maintaining inventories and other information
- 4 for distribution centers and customer supply chains. Yang ¶ 0036.
- 5 14. Yang describes iterating inventory transfers until stocking
- 6 levels at one or more stocking locations within the supply chain
- 7 are consistent with the optimal inventory plan. Yang ¶ 0053.
- 8 15. Yang describes how an internal distribution network of a supply
- 9 chain forms an internal warehouse hierarchy. The lower levels of
- 10 the warehouse hierarchy place demands on higher levels. There is
- 11 often a need to move inventory between distribution centers
- 12 within the supply chain to offset needs using excesses.
- 13 Distribution centers may need to be replenished from outside the
- 14 internal warehouse hierarchy of distributor if a distribution center
- 15 at a first level cannot meet the demand from one or more
- 16 distribution centers at a second higher level. Distribution centers
- 17 at the second level may need to procure service parts from outside
- 18 supply chain due to the lack of supply from the distribution center
- 19 at the first level. A primary difference between reliance on other
- 20 distribution centers within the supply chain and reliance on such
- 21 "out-of-network" sources is the lack of visibility into and control
- 22 over inventory associated with the "out-of-network" sources.
- 23 Yang ¶ 0019-20.

24 *Singh*

16. Singh is directed to supply chain planning and demand forecasting for proactively predicting demand across multiple levels of the supply chain so as to avoid costly mismatches of demand and supply. Singh ¶ 0002.

17. Singh describes taking new product promotions into consideration for planning inventory levels. Singh ¶'s 0080 – 82.

Facts Related To The Level Of Skill In The Art

18. Neither the Examiner nor the Appellants have addressed the level of ordinary skill in the pertinent arts of systems analysis and programming, inventory controls systems and distribution system design. We will therefore consider the cited prior art as representative of the level of ordinary skill in the art. *See Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001) (“[T]he absence of specific findings on the level of skill in the art does not give rise to reversible error ‘where the prior art itself reflects an appropriate level and a need for testimony is not shown’”) (quoting *Litton Indus. Prods., Inc. v. Solid State Sys. Corp.*, 755 F.2d 158, 163 (Fed. Cir. 1985)).

19. One of ordinary skill knew that any inventory management system that tracked parts at various locations necessarily had to document transfers or shipments among locations to accurately maintain inventory data.

PRINCIPLES OF LAW

24 *Patentable Subject Matter – Statutory Processes*

1 The law in the area of patent-eligible subject matter for process claims
2 has recently been clarified by the Federal Circuit in, *In re Bilski*, 545 F.3d
3 943, 950-952 (Fed. Cir. 2008) (en banc), *cert. granted*, 77 USLW 3442
4 (U.S. Jun. 1, 2009) (NO. 08-964).

5 The en banc court in *Bilski* held that "the machine-or-transformation test,
6 properly applied, is the governing test for determining patent eligibility of a
7 process under 101." *Bilski*, 545 F.3d at 956. The court in *Bilski* further held
8 that "the 'useful, concrete and tangible result' inquiry is inadequate [to
9 determine whether a claim is patent-eligible under 101.]" *Bilski*, 545 F.3d at
10 959-60.

11 The court explained the machine-or-transformation test as follows: "A
12 claimed process is surely patent-eligible under 101 if: (1) it is tied to a
13 particular machine or apparatus, or (2) it transforms a particular article into a
14 different state or thing." *Bilski*, 545 F.3d at 954 (citations omitted). The court
15 explained that "the use of a specific machine or transformation of an article
16 must impose meaningful limits on the claim's scope to impart patent-
17 eligibility" and "the involvement of the machine or transformation in the
18 claimed process must not merely be insignificant extra-solution activity."
19 *Bilski*, 545 F.3d at 961- 62 (citations omitted). As to the transformation
20 branch of the inquiry, the court explained that transformation of a particular
21 article into a different state or thing "must be central to the purpose of the
22 claimed process." *Id.*

23 *Anticipation*

24 "A claim is anticipated only if each and every element as set forth in the
25 claim is found, either expressly or inherently described, in a single prior art

1 reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628,
2 631 (Fed. Cir. 1987). "When a claim covers several structures or
3 compositions, either generically or as alternatives, the claim is deemed
4 anticipated if any of the structures or compositions within the scope of the
5 claim is known in the prior art." *Brown v. 3M*, 265 F.3d 1349, 1351 (Fed.
6 Cir. 2001). "The identical invention must be shown in as complete detail as
7 is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d
8 1226, 1236 (Fed. Cir. 1989). The elements must be arranged as required by
9 the claim, but this is not an *ipsissimis verbis* test, *i.e.*, identity of terminology
10 is not required. *In re Bond*, 910 F.2d 831, 832 (Fed. Cir. 1990).

11 ***Obviousness***

12 A claimed invention is unpatentable if the differences between it and
13 the prior art are "such that the subject matter as a whole would have been
14 obvious at the time the invention was made to a person having ordinary skill
15 in the art." *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007); *Graham*
16 *v. John Deere Co.*, 383 U.S. 1, 13-14 (1966).

17 In *Graham*, the Court held that that the obviousness analysis is
18 bottomed on several basic factual inquiries: "[1] the scope and content of
19 the prior art are to be determined; [(2)] differences between the prior art and
20 the claims at issue are to be ascertained; and [(3)] the level of ordinary skill
21 in the pertinent art resolved." *Graham*, 383 U.S. at 17. *See also KSR*, 550
22 U.S. at 406. "The combination of familiar elements according to known
23 methods is likely to be obvious when it does no more than yield predictable
24 results." *KSR*, 550 U.S. at 416.

ANALYSIS

Claims 26-36 and 38 rejected under 35 U.S.C. § 101 as directed to non-statutory subject matter.

4 We apply the machine-or-transformation test, as described in *Bilski*, to
5 determine whether the subject matter of process claims 26-36 and 38 are
6 patent-eligible under 35 U.S.C. § 101.

7 Process claims 26-36 and 38 recite a series of process steps that are not
8 tied in any manner to a machine. In other words, these claims do not limit
9 the process steps to any specific machine or apparatus. Each of the steps
10 receives and generates data. The steps do not recite any machine or
11 algorithm for receiving and generating such data. The Appellants argue that
12 the claims require the use of data processing equipment (Reply Br. 10), but
13 no such equipment is recited in the claims. Thus, the claims fail the first
14 prong of the machine-or-transformation test because they are not tied to a
15 particular machine or apparatus. The steps of these process claims also fail
16 the second prong of the machine-or-transformation test because the data
17 does not represent physical and tangible objects.² Rather, the data represents
18 information about inventory, which is an asset category rather than any
19 specific physical item. Inventory data may be no more than item identifiers,
20 which themselves are intangible. Thus, the processes of claims 26-36 and
21 38 fail the machine-or-transformation test and are not patent-eligible under
22 35 U.S.C. § 101.

² Because the data does not represent physical and tangible objects, we need not reach the issue of whether mere calculation of a number based on inputs of other numbers is a sufficient “transformation” of data to render a process patent-eligible under § 101.

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2

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4 *Claims 11-14, 21-24, 26, and 31 rejected under 35 U.S.C. § 102(a) as*
5 *anticipated by Yang.*

6 *Claim 11.*

7 The Appellants argue that Yang fails to describe a reverse logistics
8 means as described by process 800 in the Specification. Claim 11 specifies
9 that the reverse logistic means is for generating transfer data. This limitation
10 is expressed as a means plus function, and the Appellants have confirmed
11 that the limitation is to be construed as such. App. Br. 12-13.

12 The first step in construing a means-plus-function claim
13 limitation is to define the particular function of the claim
14 limitation. *Budde v. Harley-Davidson, Inc.*, 250 F.3d 1369,
15 1376 (Fed.Cir.2001). “The court must construe the function of a
16 means-plus-function limitation to include the limitations
17 contained in the claim language, and only those limitations.”
18 *Cardiac Pacemakers, Inc. v. St. Jude Med., Inc.*, 296 F.3d 1106,
19 1113 (Fed.Cir.2002). [] Ordinary principles of claim
20 construction govern interpretation of this claim language, *see id.*, [].

22 The next step in construing a means-plus-function claim
23 limitation is to look to the specification and identify the
24 corresponding structure for that function. “Under this second
25 step, ‘structure disclosed in the specification is “corresponding”
26 structure only if the specification or prosecution history clearly
27 links or associates that structure to the function recited in the
28 claim.’” *Med. Instrumentation & Diagnostics Corp. v. Elekta*
29 *AB*, 344 F.3d 1205, 1210 (Fed.Cir.2003) (quoting *B. Braun*
30 *Med. Inc. v. Abbott Labs.*, 124 F.3d 1419, 1424 (Fed.Cir.1997)).

31

1 *Golight Inc. v. Wal-Mart Stores Inc.*, 355 F.3d 1327, 1333-34 (Fed. Cir.
2 2004).

3

4 The reverse logistics means then must be construed to cover the
5 corresponding structure, material, or acts described in the specification and
6 equivalents for performing the recited function, *viz.* generating transfer data.
7 The claim does not further narrow the nature of the transfer data, nor the
8 manner of generation. The Appellants cite the disclosure regarding
9 reference 800 in Fig. 8 and paragraphs 0088-93 in the Specification as
10 showing the support for the claimed me Answer App. Br. 7 and 13. We
11 construe the function of generating transfer data according to its plain
12 meaning, which is creating data concerned with some transfer.

13 We agree that Fig. 8 portrays an exemplary embodiment of a reverse
14 logistics method. FF 02. However, the only disclosure related to generating
15 transfer data is the set of steps labeled as generating shipping data. FF 02 -
16 03. The disclosed structure for generating shipping data is a system for
17 supply chain management that might contain order controller, warehouse, or
18 distribution systems for generating such shipping data. FF 04. Thus the
19 issue is whether Yang describes such a system for generating shipping data.

20 The Appellants argue that Yang fails to describe receiving warehouse
21 and distribution inventory data, comparing warehouse and distribution center
22 data, and determining whether to transfer product as in the Fig. 8 flowchart.
23 All of these functions argued by the Appellants are beyond generating
24 transfer data, and thus “are superfluous to our claim construction analysis
25 because they are not required for performing the claimed function.” *Id.*
26 While these functions may decide which data to generate, they are separate

1 from the function of generating that data once decided. The flowchart in the
2 Appellants' Fig. 8 implicitly acknowledges this dichotomy by presenting
3 the generation in boxes separate from the decisions.

4 The Examiner found that Yang described a reverse logistics process in
5 an inventory management system. Answer 5. We agree that Yang describes
6 an inventory management system (FF 08) and a reverse logistics process
7 with that system (FF 07 & 10). Parts are transferred among locations within
8 the system according to decisions based on planned needs and actual levels.
9 FF 08 & 11. One of ordinary skill knew that any inventory management
10 system that tracked parts at various locations had to document transfers or
11 shipments among locations. FF 19. Thus, we agree with the Examiner that
12 Yang described a reverse logistics process in a distribution system that had
13 structure equivalent to that disclosed in the Specification for generating
14 transfer data. As this is the only issue argued with regard to claim 11, this is
15 dispositive.

16 *Claims 12 and 21.*

17 Claim 12 further requires a distribution system receiving the transfer
18 data and generating shipping data. The Examiner found that Yang's
19 inventory management system did so. Answer 6. The Appellants argue that
20 Yang's reverse logistics data is not transfer data. The Appellants first
21 contend that reverse logistics within the claims is defined as process 800.
22 App. Br. 13. We do not agree, since the Specification provides no definition
23 of reverse logistics (FF 01) and the reverse logistics process shown as
24 reference 800 in Fig. 8 is an exemplary embodiment only. FF 02.

1 The Appellants further contend that the reverse logistics disclosed is
2 hierarchical where Yang is not and that Yang fails to disclose structure that
3 facilitates product rollout. App. Br. 13-14. The pertinence of these
4 arguments is unknown since nothing in claim 12 refers to hierarchical
5 structures or product rollouts. Thus, we must disagree with the Appellants.

6 Claim 21 is another independent claim that again contains the reverse
7 logistics means limitation as in claim 11, but whose function also includes
8 receiving warehouse inventory data and distribution center inventory data.
9 As with generating data, the structure disclosed for receiving data is a
10 system for supply chain management that might contain an order controller,
11 a warehouse, or distribution systems. FF 04. As we found with claim 11,
12 Yang describes this. The Appellants again argue the absence of a
13 hierarchical distribution system (App. Br. 14) which is not pertinent in view
14 of the lack of any claim limitation regarding hierarchy.

15 *Claim 13.*

16 Claim 13 further requires the order controller system having an internal
17 warehouse order system receiving the shipping data and modifying internal
18 warehouse order data in response to the shipping data. The Examiner found
19 that Yang's inventory management system did so. Answer 6. The
20 Appellants argue that Yang does not describe internal warehouses. App. Br.
21 14. We do not agree, since Yang describes multiple inventory locations (FF
22 08) and any inventory location warehouses inventory at that location.

23 *Claims 14 and 22-24.*

24 Claims 14 and 24 further require receiving the shipping data and
25 modifying inventory data in response to the shipping data. The Examiner

1 found that Yang's inventory management system did so. Answer 6 & 7. The
2 Appellants repeat their argument that Yang does not describe hierarchical
3 distribution (App. Br. 15-16) which is not pertinent in view of the lack of
4 any claim limitation regarding hierarchy.

5 *Claims 14 and 22-24.*

6 Claims 14 and 22-24 further require receiving the shipping data and
7 modifying inventory data in response to the shipping data. The Examiner
8 found that Yang's inventory management system did so. Answer 6-7. The
9 Appellants repeat their argument that Yang does not describe hierarchical
10 distribution (App. Br. 15-16) which is not pertinent in view of the lack of
11 any claim limitation regarding hierarchy.

12 *Claims 26 and 31.*

13 The Appellants argue that Yang fails to describe warehouse or
14 distribution center inventory data, two separate generations of shipping data,
15 use of reverse logistics to generate shipping data, or even a warehouse in
16 independent method claim 26. App. Br. 16-17. The Examiner found that
17 Yang's inventory management system did so. Answer 7-8.

18 The Appellants' arguments appear to rely on two premises: (1) that the
19 reverse logistics data is generated in response to receiving warehouse
20 inventory data and distribution center data and that shipping data is
21 generated in response to reverse logistics data and (2) that Yang fails to
22 describe such transactions at a warehouse, being a long term storage facility.

23 We agree with the Examiner that the features upon which Appellant
24 relies, *viz.* the reverse logistics data generated in response to receiving data
25 and shipping data generated in response to reverse logistics data, are not

1 recited in claim 26. Although the claims are interpreted in light of the
2 specification, limitations from the specification are not read into the claims.
3 *See In re Van Geuns*, 988 F.2d 1181, 1184-5 (Fed. Cir. 1993). Although
4 limitation [1] recites receiving warehouse and distribution center data and
5 generating reverse logistics data, nothing in that limitation recites any causal
6 connection between the two operations. Similarly, although limitations [2]
7 and [3] recite receiving reverse logistics data and generating shipping data,
8 nothing in those limitations recites any causal connection between the two
9 operations.

10 Clearly any reverse logistics data used by Yang to record receipts of
11 inventory requires accessing, i.e. receiving inventory quantity data to be
12 updated, fulfilling limitation [1], and any shipping data used to update
13 inventory data requires some inventory movement transaction that
14 necessitated the shipment. This sequence in Yang of receiving the inventory
15 data prior to generating reverse logistics data also answers the Appellants'
16 follow up argument that Yang fails to use this sequence. Reply Br. 13. For
17 those transactions that involved Yang's reverse logistics data, such reverse
18 logistics data are the transactional records to record that inventory
19 movement and which necessitate shipping data to record the movement, thus
20 fulfilling limitations [2] and [3].

21 As to any distinction between a warehouse and a distribution center,
22 there is none so defined in the Specification. The Appellants cite
23 Specification ¶ 0056 (App. Br. 17), but this paragraph merely describes an
24 exemplary embodiment of a distribution system. Certainly, Yang describes
25 stocking locations (FF 08) used by manufacturers, distribution centers and
26 customers. FF 07 - 08. Stocking locations at customers, manufacturers and

1 users would generally be considered warehouses, as they warehouse stock at
2 such locations. Yang also describes distribution centers. FF 13. Yang's
3 system maintains transactions among various entities including these
4 stocking locations at customers, users, manufacturers, and distribution
5 centers. Yang also describes creating multiple shipments among stocking
6 locations. FF 14. Thus, Yang describes limitation [1] of receiving
7 warehouse and distribution center inventory data and limitations [2] and [3]
8 of generating shipping data. In those instances that the transaction involves
9 parts returns, Yang creates reverse logistics data. FF 07. Although the
10 Appellants contend the Examiner misconstrued the term reverse logistics
11 data (App. Br. 16), Yang explicitly recites using reverse logistics that creates
12 data for updating inventory levels. FF 07. Again, claim 26 recites no
13 specific connection between the reverse logistics data and the inventory data
14 and shipping data. Thus, we conclude that the Examiner did not err in
15 rejecting claim 26.

16 Claim 31 further requires giving priority in maintaining predetermined
17 inventory levels at a warehouse that is operated by an operator of a supply
18 chain management system relative to warehouses not so operated. The
19 Examiner found that Yang uses an internal warehouse and only looks to an
20 external warehouse when supply is unavailable internally. Answer 8. The
21 Appellants argue that this does not describe maintaining inventory levels at a
22 first relative to a second warehouse. Reply Br. 15. The Appellants appear to
23 be contending that because claim 31 incorporates the two warehouses from
24 claim 26, an external warehouse is irrelevant to the claim.

25 We agree with the Appellants. Yang's system would not provide reverse
26 logistics information and create shipping information for a warehouse

1 outside the system, if only by definition of a system. Thus, we agree with the
2 Appellants that as to this rejection, the inclusion of claim 31 was in error.

3 *Claims 25, 27-30, and 32-36 rejected under 35 U.S.C. § 103(a) as
4 unpatentable over Yang and Singh.*

5 Although the Appellants argue each of these claims individually, the
6 arguments are largely repeated among all these claims. These claims are
7 marked by the introduction of promotional product data, particularly for new
8 product roll outs. The Examiner applied Singh for these limitations. We
9 find that Singh does in fact describe taking new product promotions into
10 consideration for planning inventory levels. FF 17. The Appellants argue
11 that Singh is not directed to supply chain management and that neither
12 reference describes retail locations. App. Br. 18-21. As to whether Singh is
13 directed to supply chain management,

14 *Claim 38 rejected under 35 U.S.C. § 103(a) as unpatentable over Yang.*

15 Claim 38 further requires using regularly scheduled vehicles to transfer
16 inventory. The Examiner took official notice of the practice of using such
17 vehicles. Ans.10-11. The Appellants argue that it is not the use of such
18 vehicles per se that is the key limitation, but rather the limitations of claim
19 26, from which claim 38 depends. Reply Br. 21. We agree with the
20 Examiner that the use of regularly scheduled vehicles is notoriously well
21 known and was a predictable mode of transport, even for deliveries that were
22 unplanned, because the virtue of regular scheduling is that there will always
23 be a regularly scheduled vehicle available some time after an unplanned
24 need arises. As to claim 26, we found the Appellants' argument
25 unpersuasive *supra*.

CONCLUSIONS OF LAW

2 The Appellants have not sustained their burden of showing that the
3 Examiner erred in rejecting claims 26-36 and 38 under 35 U.S.C. § 101 as
4 directed to non-statutory subject matter.

5 The Appellants have not sustained their burden of showing that the
6 Examiner erred in rejecting claims 11-14, 21-24, and 26 under 35 U.S.C. §
7 102(a) as anticipated by Yang.

8 The Appellants have sustained their burden of showing that the
9 Examiner erred in rejecting claim 31 under 35 U.S.C. § 102(a) as anticipated
10 by Yang.

11 The Appellants have not sustained their burden of showing that the
12 Examiner erred in rejecting claims 25, 27-30, and 32-36 under 35 U.S.C. §
13 103(a) as unpatentable over Yang and Singh.

14 The Appellants have not sustained their burden of showing that the
15 Examiner erred in rejecting claim 38 under 35 U.S.C. § 103(a) as
16 unpatentable over Yang.

DECISION

18 To summarize, our decision is as follows.

19 • The rejection of claims 26-36 and 38 under 35 U.S.C. § 101 as
20 directed to non-statutory subject matter is sustained.

21 • The rejection of claims 11-14, 21-24, and 26 under 35 U.S.C. § 102(a)
22 as anticipated by Yang is sustained.

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- 1 • The rejection of claim 31 under 35 U.S.C. § 102(a) as anticipated by
2 Yang is not sustained.
- 3 • The rejection of claims 25, 27-30, and 32-36 under 35 U.S.C. § 103(a)
4 as unpatentable over Yang and Singh is sustained.
- 5 • The rejection of claim 38 under 35 U.S.C. § 103(a) as unpatentable
6 over Yang is sustained.

7 No time period for taking any subsequent action in connection with this
8 appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

9

10 **AFFIRMED-IN-PART**

11

12

13

14 mev

15 Address

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